

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-933-2016 (O&M)
Date of decision : 22.02.2024

Dilbag Singh JohalPetitioner

V/S

Punjab State Warehousing Corporation and othersRespondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. R. Kartikeya, Advocate with
Ms. R. Akanksha, Ms. Ridhi Bansal and
Mr. Kartik Patial, Advocates for the petitioner.

Mr. M.S. Batth, Advocate for respondents.

NAMIT KUMAR, J. (ORAL)

1. The petitioner has filed the instant writ petition under Articles 226/227 of the Constitution of India impugning the report dated 15.12.2011 (Annexure P-2); charge-sheet dated 16.01.2012 (Annexure P-3); inquiry report dated 01.04.2013 (Annexure P-8); show cause notice dated 27.06.2013 (Annexure P-7); order dated 17.09.2013 (Annexure P-10), whereby the petitioner has been removed from service and the order dated 17.11.2015 (Annexure P-13), whereby the statutory appeal filed by the petitioner has been rejected.
2. Brief facts of the case, as narrated by the petitioner in the instant petition, are that on 04.08.1986, the petitioner had joined the respondent-Corporation as Technical Assistant (TA) and on 14.10.2011, he was promoted and posted as Warehouse Manager at Phagwara, Punjab. During his tenure at Phagwara, the petitioner reported storage

loss to the tune of 363.83 qtls. on the basis of which charge-sheet was issued against three Warehouse Managers including Sh. Dev Raj, G.A. Infuriated by this report of the petitioner, the charge-sheeted employees in connivance with respondent No.2 filed a complaint dated 02.12.2011 against the petitioner alleging that 540 excess bags were lifted on 30.11.2011 and 01.12.2011. On the basis of said complaint, an inquiry was got conducted by respondent No.2 through Sh. S.P. Joshi, General Manager and 03 other officials. The Committee recorded statements of the complainants and prepared an enquiry report dated 15.12.2011. Neither, the findings recorded in the report were put to the petitioner nor his comments were sought with respect to the version of the complainants. Thereafter, charge-sheet dated 16.01.2012 was issued against the petitioner wherein the complaint dated 02.12.2011 and report dated 15.12.2011 were the only documents cited. Thereafter, respondent No.2 appointed respondent No.3 as the inquiry officer and a show cause notice dated 27.06.2013 was issued to the petitioner. On 03.08.2013 the petitioner submitted his reply to the show cause notice, however, without considering his reply, respondent No.2 passed order dated 17.09.2013 removing the petitioner from service. Aggrieved against the said order, the petitioner has filed appeal dated 03.10.2013 before respondent No.4-Appellate Authority. When no decision was taken on the statutory appeal filed by the petitioner, he approached this Court by filing CWP No.20300 of 2014 which was disposed of by this Court vide order dated 29.09.2014 with a direction to decide the appeal filed by the petitioner expeditiously, preferably within a period of 03 months.

Thereafter, respondent No.4 vide order dated 17.11.2015 dismissed the statutory appeal filed by the petitioner. Hence this petition.

3. In fact, the petitioner is challenging the disciplinary proceedings held by the respondents whereby the petitioner has been finally removed from the service vide order dated 17.09.2013 (Annexure P-10) and the statutory appeal filed against that order has also been dismissed vide order dated 17.11.2015.

4. Learned counsel for the petitioner, apart from the other grounds, which have been taken in the writ petition, has submitted that before issuance of charge-sheet dated 16.01.2012, preliminary inquiry, was held and report dated 15.12.2011 was submitted by the Committee which has conducted the preliminary inquiry. In the said inquiry, statements of Tanu Saini, T.A. (Ex.-A), Kuldeep Singh (Ex.-B), Dev Raj (Ex.-C), Jaswant Singh (Ex.-D and D1) and Ram Sharan, A.G.-1 (Ex.-F) were recorded and the said statements have been considered by the inquiry officer in his inquiry report dated 01.04.2013 without supplying copy of the same to the petitioner and granting an opportunity of cross-examining the said witnesses. He submits that the statements of abovesaid witnesses were recorded at the back of the petitioner. The said statements were not the part of the listed documents attached with the charge-sheet, yet the same have been taken into account by the inquiry officer. He further submits that the charge against the petitioner has been proved by the inquiry officer on suspicion. In support of his contention, learned counsel for the petitioner has placed reliance upon the judgments passed by Hon'ble Supreme Court in *Nirmala J. Jhala*

Vs. State of Gujrat and others : 2013(4) SCC 301 and Roop Singh Negi Vs. Punjab National Bank and others : 2009(2) SCC 570.

5. Per contra, learned counsel for the respondents submits that there is no violation of any procedure while conducting the inquiry against the petitioner and he has been given sufficient opportunity to participate in the inquiry proceedings and thereafter, the order of punishment of removal from service has been passed against the petitioner and even his appeal has also been considered by the Appellate Authority and has been rejected.

6. I have heard learned counsel for the parties and perused the record with their able assistance.

7. Admittedly, the statements of Tanu Saini, T.A. (Ex.-A), Kuldeep Singh (Ex.-B), Dev Raj (Ex.-C), Jaswant Singh (Ex.-D and D1) and Ram Sharan, A.G.-1 (Ex.-F) have been taken into consideration by the inquiry officer in his inquiry report dated 01.04.2013 and the same have been made part of the regular inquiry and the charge against the petitioner has been proved without supplying the said statements to the petitioner and without granting him an opportunity to cross-examine the said witnesses in the regular inquiry. The petitioner was never associated by the Committee before drawing the report. It is apt to note here that the names of above-said witnesses were not mentioned in the list of witnesses attached with the charge-sheet.

8. The Hon'ble Supreme Court in ***Nirmala J. Jhala's case (supra)*** has held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of

finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in the preliminary inquiry, no order of punishment can be passed and it may be used only to take a view as to whether a regular disciplinary proceedings against the delinquent is required to be held or not and the preliminary inquiry should not be confused with regular inquiry. It has also been held that evidence recorded in the preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given and using such evidence would be violating of the principle of natural justice. Paras 42 to 45 of the said judgments reads as under :-

*“42. A Constitution Bench of this Court in **Amalendu Ghosh v. District Traffic Superintendent, North-Eastern Railway, Katiyar, AIR 1960 SC 992**, held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.*

*43. Similarly in **Champaklal Chimanlal Shah v. Union of India, AIR 1964 SC 1854**, a Constitution Bench of this Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. Preliminary*

inquiry may be held ex parte, for it is merely for the satisfaction of the government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the government as to whether a regular inquiry must be held. The Court further held as under:

“12.....There must, therefore, be no confusion between the two enquiries and it is only when the Government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishment indicated in Article 311 that the government servant is entitled to the protection of that article, nor prior to that.” (Emphasis added)

*(See also: **Government of India, Ministry of Home Affairs & Ors. v. Tarak Nath Ghosh, AIR 1971 SC 823**).*

44. *In **Naryan Dattatraya Ramteerathakhar v. State of Maharashtra & Ors., AIR 1997 SC 2148**, this Court dealt with the issue and held as under:*

“.....a preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice of (sic) nor, remains of no consequence. (Emphasis added)

45. *In view of above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.*”

9. The Hon’ble Supreme Court in ***Roop Singh Negi’s case (supra)*** has held that the inquiry report cannot be based on merely ipse dixit as also surmises and conjectures and the suspicion under no circumstances be held to be substitute for legal proof. Para 23 of the said judgment reads as under :-

“23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.”

10. In view of the foregoing discussions, the present petition is partly allowed. The inquiry report dated 01.04.2013 (Annexure P-8), show cause notice dated 27.06.2013 (Annexure P-7), order of punishment of removal dated 17.09.2013 (Annexure P-10) and order dated 17.11.2015 (Annexure P-13) passed by the Appellate Authority are hereby set aside and the matter is remanded back to the respondents for holding a fresh inquiry in accordance with law and the same shall be concluded, within a period of six months from the date of receipt of certified copy of this order.

11. Pending applications, if any, shall stand disposed of accordingly.

22.02.2024

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(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No